Effect of Fair Labor Standards Amendments of 1974 on Government Employees Training Program

OGC 6/1824

Anthony L. Mondello
General Counsel

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James R. Beck, Jr., Director
Bureau of Training

This is in response to your memorandum of May 2, 1974, concerning the eligibility of Federal employees for the benefits of the overtime provision of the Fair Labor Standards Act, as amended by Public Law 93-259.

Specifically, 5 U. S. 4109(a), in relevant part, prohibits the payment of overtime pay of an employee selected and assigned for training:

> "The head of an agency, under the regulations prescribed under section 4118(a)(2) of this title and from appropriations or other funds available to the agency, may ---
>
> (1) pay all or a part of the pay (except overtime, holiday or night differential pay) of an employee of the agency selected and assigned for training under this chapter for the period of training." (Emphasis added.)

We view the statute amending the FLSA as a statute of general application, as it applies to virtually all Federal employees. On the other hand, the Government Employees Training Act is not a statute of general application but, rather, is a statute of specific purpose for application only to those certain employees chosen for participation in Federal training programs.

The Training Act, in the special situation in which it applies, prohibits payment of overtime pay during training. The effect of the exception in section 4109(a) is to prohibit overtime pay, regardless of whether it may be otherwise authorized.

The principal purpose of the recent amendment to FLSA was to broaden or liberalize the payment of overtime pay in employment situations where it was already authorized to be paid, rather than to increase the number or types of employment situations in whichbit may be paid. Considering that

purpose, and the prominence of the prohibition in section 4109, a provision of special application dealing as it does with the pay of those relatively few selected for training, we cannot conclude that employees selected and assigned for training under the Training Act may now be paid overtime.

Language in the legislative history of the FLSA Act contemplates some consistency will be achieved by the Department of Labor and the CSC in administering the provisions of the law. Accordingly, we sought the views of the Department of Labor. The Solicitor's opinion is reflected in chapter 10 of the Department of Labor's Field Office Manual, in interpretative bulletin, No. 785, "Hours Worked", and in 29 CFR Part 785. This material, however, does not deal with the problem of statutory accommodation which the Commission must deal with; it contemplates instances in which after hours training is compensable overtime, and instances in which it is not, and provides that attendance at training programs is not working time, and so not compensable at overtime rates if the following four criteria are met: "(a) Attendance is outside of the employee's regular working hours; (b) attendance is in fact voluntary; (c) the course, lecture, or meeting is not directly related to the employee's job; and (d) the employee does not perform any productive work during such attendance."

Such an interpretation does not suggest itself in our situation in view of the express prohibition in 5 U.S.C. 4109(a). The Government Employees Training Act does not set out any criteria for determining whether participation in training programs is an extension of "hours worked", or not. The distinction is not important since payment of overtime under the Act is flatly prohibited without regard to whether it is "working time" or something else.

Thus, although the legislative history of the Federal Labor Standards Act calls for consistency between the rulings and interpretations of the CSC and the Department of Labor, the consistency must be limited to those situations in which it does not result in violence to a clear, express prohibition in a statute intended for application to a particular or special situation.

In view of the foregoing it is our opinion that the statutory prohibition on overtime pay found only in 5 U.S.C. 4109(a), which is not applicable to the private sector, the interpretation of the Secretary concerning overtime pay for participation in training is not applicable to the Federal sector. Hence, although the application of the FLSA to training programs differs between the two sectors, we cannot conclude that Federal employees selected and assigned for training under the Government Employees Training Act may now be paid overtime.

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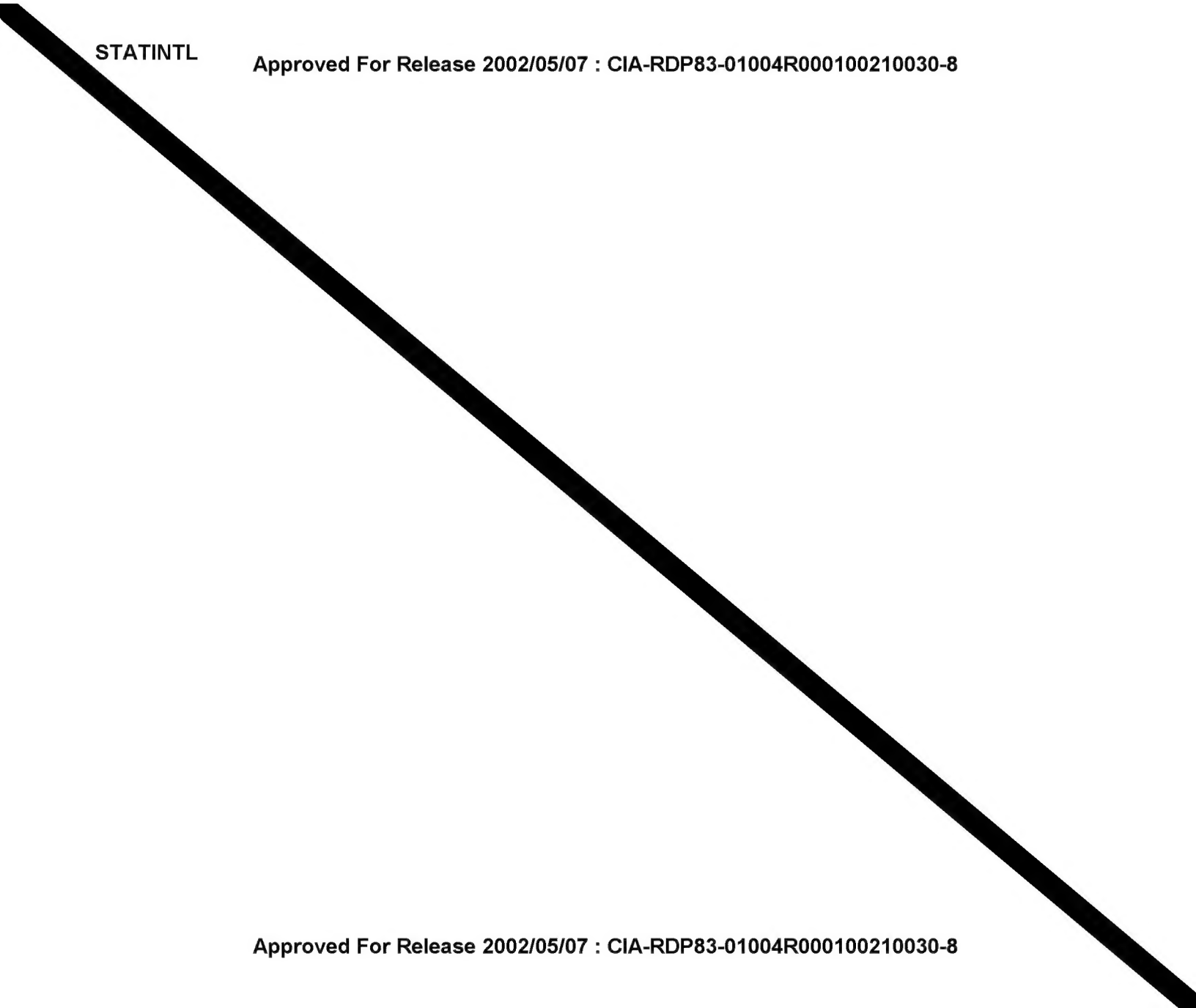

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